

William Grene Gent. Eldest Surviving Son
and Heir of John Grene Esq; Deceas'd by } Appellant.
Elizabeth his first Wife }

Johanna Grene Widow, Relict and Executrix
of the said John Grene Deceas'd, John
Green Eldest Son of the said John Grene } Respondents.
Deceas'd, by the said Johanna his Second
Wife. }

The Respondents CASE

JOH N GRENE Esquire the Appellants Father, having Married Elizabeth his First Wife, with whom he had a Portion of 1500 l. which he was put to a considerable Charge at Law to recover, and having Issue by her 2 Sons, viz. Giles Grene his Eldest Son, and the Appellant William Grene, and 2 Daughters Elizabeth and Katherine, and being entitled to 4 36th Parts or Shares of the New River Waterworks, and being indebted to Sir Thomas Meeres in 900 l. by Indentures of Lease and Release, dated the 22d and 23d of July 1674. long after the said Marriage and Birth of the said Children, the said John Grene Sen. and his Trustee, did convey and settle the said 4 Shares to the following Uses, viz. as to 2 Shares to the Use of Sir William Dolben and his Heirs, till Sir Thomas Meeres should out of the Profits have received 900 l. and such two Shares so subject, and also the 2 other Shares to the Use of John Grene Sen. for Life, and after his Decease to the Use of Sir William Dolben and his Heirs, intrust to permit the Appellant and his Sisters Elizabeth and Katherine, and the Heirs of their Bodies respectively to receive 60 l. per Annum apiece for ever out of the Profits of the premises and to permit such Person as John Grene Sen. should by Deed or Will appoint to receive 60 l. per Annum more thereout, and to permit Giles Grene to receive the Refidue of the Profits for his Life, with Remainder to his first and other Sons successively in Tail Remainder to his Daughters in Tail, and then to the Appellant for his Life, and then to his first and other Sons successively in Tail, and then to his Daughters in Tail, with Remainder as to one Moiety to Elizabeth and the other to Katherine with like Limitations to their respective Issues Male and Female, and with cross Remainders over to each of them with a Proviso that if Elizabeth or Katherine should marry in their Fathers Life Time, and respectively receive from him 1000 l. then the Trust for the Payment of their 60 l. per Annum to cease, which said Settlement of the 23d of July 1674. being voluntary, and John Grene Sen. having married the Respondent Johanna his Second Wife, and having Issue by her the Respondent John.

On the 10th of April 1685. a Decree in the High Court of Chancery was obtained in a Cause, wherein John Grene Sen. was Plaintiff against the said Sir William Dolben, Giles Grene, the Appellant and Mr. Hunt, and the said Elizabeth then his Wife, and Mr. Atkins, and the said Katherine then his Wife, Defendants.

And by Indentures of Lease and Release Dated respectively the 8th and 9th of September, 1685. a Settlement was made of the said 4 Shares pursuant to the said Decree, whereby the Limitations of the Settlement in 1674. were in some measure varied, but with Limitations to the Appellant for Life, and to his Sons successively Intail male expectant on the Death of his Father, and on the Death of his Brother Giles without Issue after which Settlement Giles married Mary the Daughter of Mr. Edmond Soame, and had with her a Portion of 2500 l. and a Jointure was settled on her of 300 l. per Annum.

The Appellants Father was all along very kind to him till by his frequent Miscarriages he forfeited his Favour, and first the Appellant was placed an Apprentice with Mr. Eyre a Druggist, and 100 l. was paid on that account, but for his Misbehaviour his Master turn'd him off and would keep him no longer. His Father then put him Apprentice to a Brewer, but he was soon dismissed from that Service and returned to his Father who bought him an Ensigns Commission in the Army, and was at considerable Charges therein, and in Equipping him for it, and he was sent over to Ireland but soon grew weary of that Employment and returned again to his Father in a very miserable Condition, who notwithstanding received him kindly and allowed him a competent Maintinance, but the Appellant would not live within bounds and so contracted several Debts which his Father was constrained to pay, and at length perceiving that he was incorrigible and likely to waste the Estate if it should come to him, or to sell his future Interest in the Estate for some trifling consideration to Strangers to supply his Extravagancies, for preventing whereof his Father thought it most prudent to buy out his Interest in the premises and to come to a fair agreement with him for that Purpose.

By Articles dated 29th June 1694. John Grene Sen. agreed to pay 50 l. to the Appellant and to settle 100 l. per Annum on Trustees for the Appellants Life in full Satisfaction for the Appellants 60 l. per Annum which he was entitled to after his Fathers Death, and the Interest which he had in the premises expectant on the Death, of his Father and on the Death of his Brother Giles without Issue who was then living.

In pursuance of which agreement by Indenture dated 5th July 1694 the Appellants Father settled on Trustees and their Heirs for the Appellants Life 100 l. per Annum payable Quarterly in trust to dispose it not as the Appellant should direct so as it might not be in his power to sell the same but that the same might be applied for the Appellants benefit as the Trustees should think fit.

That by Indenture of the same Date in farther pursuance of the said agreement in consideration of 50 l. then pay'd to the Appellant by his Father, and that his Father had settled 100 l. per Annum on Trustees and their Heirs for the Appellants Life on the Trust agreed on for his benefit the Appellant conveyed to his Father and his Heirs as well the said 60 l. per Annum to be received by him out of the premises after his Fathers Death, as also all his right and title to the premises which were limited to him in remainder for his Life, on Failure of Issue by his brother Giles: And his Father by his Will charged the premises with the payment of the said 100 l. per Annum for the Appellants benefit.

And Giles Grene the Appellants Brother having borrowed 500 l. of Mr. Peters and prevailed with Edmond Soame to stand bound with him for that Debt in a Bond of 1000 l. penalty, the Appellant joined with his Brother Giles in a Counter Bond of 2000 l. penalty to Soame for his Indemnity.

That Soame frequently threatening to sue the Appellant upon the said Counter Bond the Appellants Father thereupon pay'd off the said 500 l. and Interest, and took an Assignment of the said Bond from Peters and of the said Counter Bond from Edmond Soame date 13th May 1697, and the Appellant being sensible that the respondent Johanna as Executrix of the Appellants Father was entitled to the Money so pay'd on the said Bond.

In Michaelmas Term 1706 the Appellant preferred his Bill in Chancery against the Respondent and others to be relieved against the said Articles of the 29th June and deed of 5th July 1694 suggesting that the same were gained from him by surprize and other unfair means, and without any adequate consideration and to have the said Counter Bond delivered up, to which Bill the Respondents and the other Defen. put in their Answers and the Respondent John Grene by his Answer insisted that before his Marriage in his Fathers Life time by Indenture of settlement dated the 4th December 1702 in consid. of such Intended Marriage and 2300 l. Portion of Mary Respondent John's Wife, whereof 2000 l. was pay'd to John Grene Sen. and the rest to the Respondent John Grene Jun. besides a Conveyance from the said Respondents Wife before Marriage to him of several Lands in Kent worth 800 l. and upwards; John Grene Sen. settled the premises and charged the same with 250 l. per Annum payable to Trustees and their Heirs in trust for the Respondent John for Life then to Mary his then intended Wife for life then to their first and other Sons in tail male successively remainder to their Daughters in tail then to the Respondent John Grene in Fee, and did insist that by the Statute of 27 Elizabeth the settlements of 1674 and 1685 being voluntary are void as against him and his Wife and their Issue who are Purchasers for a valuable Consideration of such 250 l. per Annum.

On the 11th November 1709 the Cause was heard before the late Lord Chancellor, and his Lordship was of opinion that such Interest and Right as the Appellant had under the settlement of 1674 was well conveyed to his Father by the said Deed and Articles in 1694, and therefore so much of the Appellants Bill as sought to have an account under the said settlement of 1674, and to set aside the said Articles and Deed of 1694 was dismiss but without prejudice to his Issue and the Appellant was to have no costs to the hearing, which dismissal is humbly conceived to be consonant to the Rules of Equity.

That the Decree in April 1685, and the Settlement in September 1685 were unjust attempts to break in upon the Settlement in 1674 and the agreement in 1694 was carrying on the same Fraud.

The Decree and Settlement in 1685. do not injure the Right of the Appellant or his Issue Male, but leave the same as it stood upon the Settlement in 1674. and the Appellants Issue are not injured by the said Agreement and Deed in 1694. but their Right stands unimpeached, and not prejudiced by the last Decree.

That the Articles of the 29th of June 1694. were gained by Surprize and other undue means, and without an adequate consideration. It fully appears by the Proofs in the Cause that the Agreement was made with great Solemnity and Deliberation, and the Appellant understood the Import of it, and declared oftentimes that he was well satisfied with it till after the Death of his Father and Elder Brother, and the Consideration was adequate, if it be considered that the Appellant was intitled to nothing in the Life time of his Father, and only to 60 l. per Annum on his Fathers Death, and his future Interest in the Premises was only for his Life expectant on the Death of his Father and of his Brother Giles without Issue, which was very remote, Giles being then in the Vigour of his Age not above Thirty Two, and very healthy, and his Wife some Years younger and both likely to have Children.

That the Appellant ought to have had Costs decreed against the Respondent Johanna at least out of her Husbands Assets throughout the Cause in regard the Appellant prevailed as to having up the Counterbond, and likewise having the Annuity clear from Taxes.

The Suit as to having up the Counterbond was needless in regard no Demand was made nor intended against the Appellant thereupon before that Suit commenced in Chancery, and the Proofs and Examination in the Cause related principally to the other Point touching the setting aside the Articles and Deed of 1694. and the Matter of Taxes depended purely on the Construction of the Deed of the 5th of July 1694. and the Will of John Grene Sen. whereby the Premises are charged therewith, and there being a Defect of Personal Assets, it was apprehended that the said 100 l. per Annum issuing out of the said Shares which are a real Estate, the same ought to be subject to Taxes, the Doubtfulness of which Point might justly Excuse the Respondent Johanna from paying of Costs.

Wherefore the Respondents humbly hope that the said Decree of the 11th of November 1709. shall be affirmed, and the Appeal dismissed with Costs.

E. Norrhey.

J. Jekyl.